

*ht*  
 FILED \_\_\_\_\_  
 U.S. DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT SEATTLE

JUN 1 2002

U.S. DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT SEATTLE

CR 00-00482 #00000138

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES HOUSTON ANDERSON, et al.,

Defendants.

CASE NO. CR00-482C

ORDER

*of c, per*

This matter comes before the Court on defendant James Houston Anderson's motion for Hyde Amendment fees, sanctions, and discovery (Dkt. No. 108) and Mr. Anderson's motion to strike plaintiff's supplemental response to that motion (Dkt. No. 124). The Court has considered the papers submitted by the parties and determined that oral argument is not necessary. For the following reasons, Mr. Anderson's motion for Hyde Amendment fees, sanctions, and discovery is hereby DENIED, and Mr. Anderson's motion to strike plaintiff's supplemental response to that motion is hereby DENIED.

As a preliminary matter, Mr. Anderson moves to strike plaintiff's supplemental response to his motion for Hyde Amendment fees, sanctions, and discovery. Mr. Anderson properly noted the underlying motion for August 17, 2001. The parties briefed the motion in conformance with Local Civil

ORDER - 1

138

1 Rule 7, but on September 12, 2001, plaintiff filed an untimely supplemental response. Plaintiff did not  
2 request leave of Court to file this supplemental pleading. However, considering the highly detailed  
3 nature of Mr. Anderson's factual arguments and the significance of the underlying motion, the Court  
4 concludes that it shall consider plaintiff's supplemental response and the attached affidavit of Thomas C.  
5 Wales. Moreover, the Hyde Amendment provides that the Court, "for good cause shown, may receive  
6 evidence *ex parte* and *in camera*." Although this provision does not ratify plaintiff's supplemental  
7 response here, it does reflect a statutory intent to provide the Court wide evidentiary latitude with respect  
8 to evaluating a motion for fees and costs.<sup>1</sup> Therefore, the Court DENIES Mr. Anderson's motion to  
9 strike plaintiff's supplemental response to his motion for Hyde Amendment fees, sanctions, and  
10 discovery.

11 Mr. Anderson argues that he is entitled to attorney's fees and costs stemming from this  
12 prosecution because the government's position was vexatious, frivolous, and in bad faith. The Hyde  
13 Amendment provides, in relevant part:

14 [T]he court, in any criminal case (other than a case in which the defendant is represented by  
15 assigned counsel paid for by the public) . . . may award to a prevailing party, other than the  
16 United States, a reasonable attorney's fee and other litigation expenses, where the court finds  
17 that the position of the United States was vexatious, frivolous, or in bad faith, unless the  
18 court finds that special circumstances make such an award unjust. Such awards shall be  
19 granted pursuant to the procedures and limitations (but not the burden of proof) provided for  
20 an award under section 2412 of title 28, United States Code.

21 18 U.S.C. § 3006A. The Hyde Amendment is directed at the government's litigation position. United  
22 States v. Sherburne, 249 F.3d 1121, 1128 (9th Cir. 2001). It provides a defendant some relief for  
23 prosecutorial misconduct, not prosecutorial mistake. United States v. Braunstein, 281 F.3d 982, 995  
24 (9th Cir. 2002) (quotations and citations omitted).

25 Plaintiff first contends that Mr. Anderson is not a "prevailing party" because plaintiff dismissed  
26

---

<sup>1</sup> Whether a motion pursuant to the Hyde Amendment is a civil or criminal matter is not  
dispositive of the issue presently before the Court. See generally United States v. Braunstein, 281 F.3d  
982, 993 (9th Cir. 2002) (holding that Hyde Amendment appeal is civil matter).

1 all charges against him. However, as Mr. Anderson notes, the Court ordered the dismissal of the  
2 Indictment against him on June 29, 2001 (Dkt. No. 104). Plaintiff's argument is without merit; Mr.  
3 Anderson is a prevailing party as contemplated by the Hyde Amendment.

4 The parties do not dispute the Hyde Amendment's legal standards or their disjunctive nature.  
5 First, a "vexatious" litigation position requires both a subjective and objective element; that is, "fees are  
6 permissible when the prosecution was unwarranted because it was intended to harass and without  
7 sufficient foundation." Sherburne, 249 F.3d at 1127. Second, "frivolous" means "groundless . . . with  
8 little prospect of success; often brought to annoy or embarrass the defendant." Braunstein, 281 F.3d at  
9 995 (quotations and citations omitted). A defendant's burden is to demonstrate that the government's  
10 position was "foreclosed by binding precedent or so obviously wrong ." Id. Third, in dicta the Ninth  
11 Circuit adopted the Eleventh Circuit's definition of "bad-faith": it is not "simply bad judgment or  
12 negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose . . . it  
13 contemplates a state of mind affirmatively operating with furtive design or ill will." Id. (citing United  
14 States v. Gilbert, 198 F.3d 1293, 1298 (11th Cir. 1999)).

15 Here, because plaintiff dismissed the charges against Mr. Anderson, the Court lacks the benefit  
16 of a trial record or the full development of the parties' respective factual allegations. The Court has  
17 carefully reviewed the materials submitted by Mr. Anderson, including defense counsel's September 21,  
18 2000 letter to plaintiff's counsel. That letter, written prior to Mr. Anderson's indictment, provides a  
19 detailed summary of Mr. Anderson's perspective on the events at issue. It discusses his role as financier  
20 of the Intrex helicopter-rebuilding project, his lack of professional experience with respect to helicopter  
21 parts and mechanics, his ignorance that Mr. Powell lacked good title to the helicopter, and his  
22 knowledge of and relationship to Federal Aviation Administration (FAA) inquiries and investigations.<sup>2</sup>

---

23  
24 <sup>2</sup> It is essential to distinguish the FAA's inquiries and investigations from plaintiff's litigation  
25 position. The Hyde Amendment speaks to the litigation position of the United States, not prior acts by  
26 administrative agencies. Whether improper motives existed within the FAA does not control the instant  
analysis. Even if such motives led certain FAA employees to overly scrutinize Intrex's activities, their  
ORDER – 3

1 However, regardless of whether Mr. Anderson was Mr. Powell's "innocent victim," had knowledge of  
2 unlawful activity, or participated in any such activity, this Court's inquiry is limited to whether the  
3 United States adopted a litigation position that was "vexatious, frivolous, or in bad faith."

4 Plaintiff demonstrates that, at the time of the Indictment, it possessed evidence leading to the  
5 reasonable conclusion that Mr. Anderson knowingly acted with Mr. Powell to improperly certify  
6 Intrex's rebuilt helicopter. At this time, plaintiff was relying on a legal interpretation that suggested Mr.  
7 Anderson had acted unlawfully. Regardless of defense counsel's explanations to the contrary, this  
8 evidence provided a reasonable basis for the Indictment. In addition, as the investigation progressed,  
9 plaintiff could reasonably rely on Mr. Powell's statements implicating Mr. Anderson in criminal activity  
10 because Mr. Powell has personal knowledge of the events giving rise to the Indictment. Mr. Anderson  
11 vigorously disputes Mr. Powell's statements. Yet, whether true or false, the statements corroborated  
12 other evidence supporting the Indictment.

13 Plaintiff moved to dismiss the Indictment as to Mr. Anderson, in part, because the FAA's senior  
14 expert on the differences between Bell 204B helicopters and Bell UH-1 helicopters:

15 disagrees with Bell Helicopter and the Government's expert witness on whether use of  
16 uniquely military parts on civilian helicopters is inherently dangerous, and the FAA's expert  
17 believes that there is no inherent safety consideration in the conversion, assuming the  
18 military parts used are equivalent to, or better than, the parts they replace.

19 The motion also cites the experts' disagreement with respect to whether "a helicopter bearing Bell Serial  
20 No. 2030, and allegedly repaired/rebuilt utilizing uniquely military Bell UH-1 parts, is a civilian Bell  
21 204B helicopter." It appears a dispute remains as to the proper interpretation of the relevant federal  
22 regulations.

23 Mr. Anderson fails to set forth sufficient evidence showing that plaintiff's litigation was  
24 vexatious, frivolous, or in bad faith. There is no evidence that plaintiff adopted a litigation position to  
25 annoy, harass, or with ill will or dishonest purpose toward Mr. Anderson. Moreover, Mr. Anderson sets

---

26 inquiries and investigations generated sufficient valid evidence on which to base the Indictment.

1 forth no binding precedent that suggests plaintiff's litigation position was "so obviously wrong." As  
2 stated, it appears to be the subject of expert dispute. Further, regardless of whether the evidence, which  
3 provided the basis for the Indictment, was ultimately convincing, there is no evidence that plaintiff's  
4 prosecutorial decision was in bad faith. Mr. Anderson attaches significance to the fact that plaintiff  
5 dismissed all charges against him before trial. Although the dismissal suggests that plaintiff reassessed  
6 the merits of its case subsequent to the Indictment, it does not suggest any dishonest purpose in the  
7 Indictment itself.<sup>3</sup> The Hyde Amendment should not dissuade the United States from reconsidering the  
8 merits of its position as an investigation progresses. See United States v. Knott, 256 F.3d 20, 33 (1st  
9 Cir. 2001). As stated above, the Hyde Amendment is directed to misconduct, not mistake. It is not the  
10 forum to try a case previously dismissed. Accordingly, the Court DENIES defendant James Houston  
11 Anderson's motion for Hyde Amendment fees, sanctions, and discovery.

12 In the alternative, Mr. Anderson asks the Court to employ its "inherent powers" to authorize the  
13 investigation of the FAA's conduct in this matter. Mr. Anderson contemplates discovery, disclosure of  
14 grand jury testimony, and a complex evidentiary hearing. Essentially, Mr. Anderson seeks to scrutinize  
15 the entire course of the investigation in a full-blown adversarial trial. The procedures proposed by Mr.  
16 Anderson extend far beyond what Representative Hyde contemplated and cannot be justified under  
17 either the Hyde Amendment or, in these circumstances, under any other theory of recovery. The Court  
18 declines to embark upon a separate standard-less evaluation of the United States' prosecutorial decisions  
19 or the conduct of the FAA. Therefore, the Court DENIES Mr. Anderson's request that this Court  
20 authorize an investigation of or otherwise sanction the conduct of the United States in this action.

21 Finally, Mr. Anderson challenges the veracity of certain recitations in a plea agreement entered  
22 in case number CR01-249L. Mr. Anderson argues that these statements, subsequently published, are  
23 patently false and have damaged his personal and professional reputation. However, Mr. Anderson was  
24

---

25 <sup>3</sup> Of course, had plaintiff persisted with the prosecution through trial, the Court's analysis might  
26 be different.

1 not party to the plea agreement at issue or even to case number CR01-249L. The Hyde Amendment  
2 provides no avenue for relief with respect to a prosecution to which the movant is not party. Likewise,  
3 this Court will not employ its "inherent powers" to provide any such relief.

4 SO ORDERED this 12<sup>th</sup> day of June, 2002.

5  
6   
7 CHIEF UNITED STATES DISTRICT JUDGE  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25